

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1399 of 1984

with

CRIMINAL APPEAL No 213 of 1988

with

CRIMINAL REVISION APPLICATION NO.129 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JOHN HEMILTON CHRISTIAN

Versus

BARDOLIVALA & CO.

Appearance:

1. Criminal Appeal No. 1399 of 1984 Mr.Satyajit Sen for
(MR GN DESAI) for Petitioner
MR TS NANAVATI for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 8
2. Criminal AppealNo 213 of 1988 Mr.Satyajit Sen for
(MR GN DESAI) for Petitioner in Cr.Rvn.Appln.No.1129/88
MR TS NANAVATI for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 8

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 17/02/98

ORAL JUDGEMENT

The complainant John Hamilton Christain, Prosecution Inspector, Surat Municipal Corporation, Surat filed Criminal Case No. 417/81 in the court of Judicial Magistrate First Class (Municipal) at Surat against the accused persons (8 in nos) for the offence punishable under Section 398 of the Bombay Provincial Municipal Corporation Act, 1949 (For short, the Act) read with the relevant rules of Octroi Rules of Surat Municipality Corporation read with standing order no.13,21 and 6 of the standing orders of the Surat Municipality Corporation on the following facts:

2. The accused persons imported some goods of fire crackers without making a declaration in that respect and without making payment of octroi for the same at the time of importing the said goods within the Corporation limits of Surat Municipal Corporation and they stored the goods in the godown situated in Bhajivali Pole at Surat. It so happened that on 4.11.80 at about 3'0' clock at midnight the Police Department had searched the aforesaid property and as per the information received from the Police, goods of firecrackers weighing about 15700 kilograms valuing Rs.295000/- came to be seized by the Police and had been kept in possession of the Police. The Surat Municipal Corporation having come to know about this fact issued notice dated 5.11.80 to the accused persons for producing relevant evidence in respect of payment of octroi for the aforesaid goods. The accused persons did not supply the evidence but they only admitted the fact that their aforesaid goods were seized by the Police. A repeat notice dated 1.12.80 was also issued by the Surat Municipal Corporation and in reply thereto, one of the partners of accused no.1 prayed for some time to give reply. After passage of some time notice dated 22.1.81 was also sent but in reply thereto, the accused persons informed that they wanted to obtain copy of the Panchnama. It is the say of the complainant that on such pretext, the accused persons did not supply evidence in respect of payment of octroi. In that view of the matter, once again notice dated 3.3.81 was issued but the accused persons evaded supplying the evidence on the pretext that they were not able to get copy of the Panchnama. Consequently, the complainant was required to file the aforesaid complaint.

3. Summons were issued to the accused persons during the course of trial before the learned Magistrate. Accused no.3 died and therefore by order dated 6.7.81 the learned Magistrate noted that the complaint stood abated as against accused no.3.

4. After recording the evidence, the learned Magistrate acquitted the accused persons of the offence punishable under Section 398 of the Act but convicted them of the offence punishable by virtue of standing order no.6 read with standing order no.19 and sentenced each of them to pay fine of Rs.100/- in default to undergo simple imprisonment for a period of 5 days. He also sentenced each of them to pay fine of Rs.100/- each in default to undergo simple imprisonment for a period of 5 days for breach of Octroi Rule No.21.

5. As a result of the aforesaid impugned judgment and order dated 1.6.84 rendered by the Learned Judicial Magistrate First Class (Municipal) Surat, Criminal Appeal No.1399/84 was filed before this court by the complainant, after obtaining leave of this court. It also appears that the accused persons had filed Criminal Appeal no.67/84 in the Sessions court at Surat, against the conviction and sentence and the same having been transferred before this court has been numbered Criminal Appeal no. 213/88. It further appears that the complainant has challenged the impugned judgement and order before the Sessions Court by filing Revision Application No.94/84 and the same has been transferred before this court and is now the Criminal Revision Application No.129/88. This happened pursuant to the order 2.5.84 (Coram : J.P.Desai, J, as he then was) directing Criminal Revision Application No.94/1984 and Criminal Appeal No. 67/84 pending before the court of Sessions to be transferred to this court for being heard with Criminal Appeal No. 1113/84. That is how all these matters have been placed for final hearing before this court.

6. I have heard Mr.Satyajit Sen for the original complainant, Mr.T.S.Nanavati for the original accused persons and Mr.N.D.Gohil, Learned APP for the State of Gujarat.

7. At the outset it may be noted that the learned Magistrate has referred to the documents, 19 in nos appearing at Exh.30,31,32,33,34,39,40,41,42,43,44, 45,46,47,48,49,50,51,52 and the oral evidence of:

1. Complainant Exh.29

2. Witness Chandravadan Himatlal Jaiswal Exh.69
3. Witness Maganbhai Vallabhbhai Exh.92
4. Witness Jayantilal Mehta Exh.95
5. Witness Dalsukhbhai Exh.109
6. Witness Jayantilal Modi Exh.99
7. Deposition of Amrutlal Nayak Exh.116
8. Witness Jagdishchandra Exh.112
9. Witness Kishorechandra Nanavati Exh.125
10. Deposition of Ajitkumar Desai Exh.127
11. Deposition of Rajanarayan Shukla Exh.129
12. Deposition of Shaukatali Munshi Exh.131

8. Upon the conclusion of the evidence, further statement of the accused persons was recorded by virtue of Section 313 of the Code of Procedure, 1973. After hearing the learned advocates appearing for the accused persons and the learned Counsel appearing for the complainant, as also the learned APP, the learned Magistrate raised points for determination to the following effect:

1. Does the complainant prove that the accused persons have evaded payment of Octroi Duty on the fire crackers and thereby have committed Criminal Act and rendered themselves liable to pay Octroi to the extent of ten times?
2. Does the complainant prove that the accused persons failed to give declaration as per Schedule A in respect of the goods brought for sale within the City limits of Surat Municipal Corporation and found from their possession and committed the offence in that respect?
3. Does the complainant prove that the accused persons committed breach of the standing orders making them responsible for the offence punishable under standing order 19?
4. Does the complainant prove that the accused persons obstructed the inquiry of the concerned officer of Surat Municipal Corporation when they were importing the goods in question within the octroi limit of Surat Municipal Corporation and thereby they have committed offence under Octroi Rule no.13?
5. Does the complainant prove that the accused persons committed offence under Rule (Section 28) as a result of non-supply of necessary particulars upon requisition under Rule 21?

9. The learned Magistrate answered the first and the fourth point in the negative and acquitted the accused persons of the offence arising as a result thereof, whereas he answered points no.2,3,5 in the affirmative and convicted the accused persons of the offence arising as a result of the findings on the said points.

10. Mr.Satyajit Sen, Learned Advocate appearing for the complainant has referred to the admitted fact with regard to the goods in question having been found from the possession of the accused persons upon the police raid. He has therefore, submitted that the Learned Magistrate has committed an error in not convicting the accused persons by virtue of Section 398 of the Act. Now on a reference to the impugned judgement, it clearly appears that the complainant failed to produce any evidence or material for showing when the goods in question were imported within the octroi limits of Surat Municipal Corporation. It also failed to produce the evidence for showing as to from whom the accused persons had purchased the goods in question. The complainant also failed to establish by placing on record any reliable evidence with regard to these facts and the facts concerning payment of octroi at the time when the goods in question entered the octroi limits of Surat Municipal Corporation. Under such circumstances the fact that no octroi was paid on the goods in question at the time when they entered the octroi limits of Surat Municipal Corporation could not be and had not been shown before the court by any evidence. The learned Magistrate has referred to the relevant evidence in that respect also. Mr.Sen having gone through the evidence has not been able to point out anything contrary to the factual finding rendered by the learned Magistrate. Section 398 of the Act would read as under:-

"Where any vehicle, animal, or goods imported into the limits of the City are liable to the payment of toll or octroi any person who, with the intention of defrauding the Corporation, causes or abets the introduction of or himself introduces or attempts to introduce within the limits of the City any such vehicle, animal or goods upon which payment of the toll or octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which may extend to ten times the amount of such toll or octroi or to two hundred and fifty rupees, whichever may be greater."

On a plain reading of the above provision, it may be noted that the prosecution would have to establish beyond reasonable doubt the fact with regard to introduction or attempt to introduce the goods in respect of which octroi is liable to be paid, with a view to defraud the Corporation. The said basic fact as contemplated by the aforesaid provision has not been established before the learned Magistrate. Hence, in the facts and circumstances of the case, the submission of Mr.Sen that the find of the goods in question from the possession of the accused persons by the Police will lead to proving the prosecution case under Section 398 of the Act cannot be accepted.

11. With regard to the rest of the points for determination Mr.T.S.Nanavati, Learned Advocate appearing for the accused persons has read before this court the provisions contained in Rule No.21 which deals with issuance of requisition by the Commissioner or the officer authorised by the Commissioner in form No.7 read with Rule No.27 & 28 which respectively deal with seizure of documents and matters of penalty for breach of any of the rules. According to his submission, although time and often requisitions were issued as stated in the complaint, the accused persons were not in a position to comply with the same for the reason that they were not able to get certified copy of the Panchnama of the seized goods of fire crackers. Mr.T.S.Nanavati then read Standing order no.6 with regard to submission form as per Schedule A (Annexure A) stating therein the particulars of the goods imported alongwith the value thereof with a verification in that respect. Standing order no.19 speaks about the penalty to be imposed for breach of the standing orders or for supplying false particulars or for making a false claim of refund of money.

12. Now on a reference to the impugned judgement, it might be noted that the goods in question were found to be in possession of the accused persons and that fact has been borne out from the evidence placed on the record. The accused persons committed breach of supplying necessary particulars with necessary declaration in form as per Schedule A. They did not answer the requisition inspite of repeated reminders and they merely placed defence to the effect that they did not get copy of the Panchnama. Under such circumstances, the learned Magistrate found the accused persons for the breach of standing order no.6 read with standing order no.19, as also breach of rule 21 read with rule 28 of the Octroi rules. Having gone through the impugned judgement and

having heard Mr.T.S.Nanavati appearing for the accused persons, I am of the opinion that the learned Magistrate has not committed any error either of facts or of law in rendering conviction and sentence upon his findings on points no.2,3 & 5.

13. In the facts and circumstances of the case, therefore, it is not possible to show any indulgence to either of the Counsels appearing for rival sides. Following order is therefore passed:

O R D E R

14. Both the appeals as also the revision application are hereby dismissed.

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